

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Supreme Court No. 156241

Court of Appeals No. 329046

Lower Court No. 14-1711 FC

Plaintiff-Appellant,

-vs-

CHRISTOPHER ALLAN OROS

Defendant-Appellee

KALAMAZOO COUNTY PROSECUTOR

Attorney for Plaintiff-Appellant

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Attorney for Defendant-Appellee

**DEFENDANT-APPELLEE'S RESPONSE TO
APPLICATION FOR LEAVE TO APPEAL**

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Christopher Allan Oros

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JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Defendant-Appellee Christopher Oros was convicted, *inter alia*, of First-Degree Premeditated Murder and First Degree Felony Murder.

In a published decision issued June 8, 2017, the Court of Appeals vacated these two convictions and remanded for retrial. Appendix A.

The prosecution filed an Application for Leave to Appeal to this Honorable Court, challenging only the Court of Appeals' decision with regard to the Premeditated Murder conviction.

The Court of Appeals' decision was correct and sound, and should not be disturbed. Therefore, Mr. Oros prays that this Court deny the application.

STATEMENT OF QUESTION PRESENTED

- I. DID THE COURT OF APPEALS CORRECTLY VACATE MR. OROS' CONVICTION FOR PREMEDITATED MURDER, BECAUSE THERE WAS NO EVIDENCE OF PREMEDITATION OR DELIBERATION?

Court of Appeals answered, "Yes."

Defendant-Appellant answers, "Yes".

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

Overview

Defendant-Appellee Christopher Oros was convicted of First-Degree Premeditated Murder¹, First Degree Felony Murder², First Degree Arson,³ Second Degree Home Invasion⁴ and Escape While Awaiting Trial⁵ on July 30, 2015, after a jury trial in Kalamazoo County Circuit Court, before the Honorable Paul J. Bridenstine. On August 24, 2015, he was sentenced to two terms of natural life for the murder counts, 25 to 40 years for arson, 10 to 22.5 years for home invasion and 2 to 6 years for escape, as a second habitual offender. He appeals as a matter of right.

Mr. Oros was convicted of killing Marie McMillan in her home. He maintains that he acted in self-defense, after Ms. McMillan attacked him with a knife in a schizophrenic rage. He admitted returning to Ms. McMillan's home after her death and setting a fire in an attempt to cover up the incident.

Evidence of the Decedent's Psychological History

Before trial, the prosecution moved to exclude evidence that Marie McMillan suffered from paranoid schizophrenia. In particular, the defense sought to introduce evidence that Ms. McMillan was a "high functioning schizophrenic who suffered from high anxiety," that she was paranoid, and that she commonly made "mountains out of molehills"⁶ and had been paranoid

¹ MCL 750.316 (1)(a)

² MCL 750.316 (1)(b)

³ MCL 750.72

⁴ MCL 750.11a (3)

⁵ MCL 750.197 (2)

⁶ Defendant's Motion for Reconsideration ¶1

about people trying to kill her. The defense asserted ⁷ that evidence of Ms. McMillan's history of mental illness was directly relevant to Mr. Oros' credibility in recounting the bizarre and aggressively violent behavior Ms. McMillan exhibited, which prompted him to stab her in self-defense. (Hrg 4/17/15, 10-13)

Initially, the court declined to exclude the evidence, reserving its judgment until after the defense tendered evidence of acting in self-defense. (Hrg 4/17/15, 12-14) Thereafter, the parties apparently filed briefs⁸, prompting the court to revisit the matter. (Hrg 7/10/15, 45) This time, the court excluded evidence of the decedent's history of mental illness, although it did hold that the defense would be permitted to introduce evidence of Ms. McMillan's reputation for aggression or violence. (Hrg 7/10/15, 52)

The defense twice moved for reconsideration, which was denied.⁹

Severance of Escape Charge

The defense moved to sever the escape charge, arguing that Mr. Oros' attempt to escape jail while awaiting trial was unrelated to the other charges, and that its inclusion would cause undue prejudice.¹⁰ The motion was denied.¹¹ (Hrg 5/15/15, 24-29)

At trial, testimony was admitted indicating that, on December 4, 2014, Mr. Oros pushed jail guard Dionna Johnson, took her keys and attempted to open a door, then was apprehended by jail personnel. (TR IV, pp 113, 120).

⁷ At the hearing held April 17, 2015, defense counsel referenced a written response that had been filed (Hrg 4/17/15, 10), however no such response is contained in the court file provided to appellate counsel.

⁸ Again, while the court file contains the prosecution's Brief, appellate counsel did not receive the defense Brief on this issue.

⁹ Motion for Reconsideration to Allow Evidence of Victim's Psychological History at Trial, filed July 20, 2015; Order July 22, 2015; Order July 23, 2015; see also TR I, pp 5-8.

¹⁰ Motion to Sever Count 5 Escape Awaiting Trial for Felony

¹¹ Order 7/10/15

Trial ProceedingsOther Acts¹²

Anthony Rice testified that Mr. Oros visited him several times. On one occasion, Mr. Oros stayed with Mr. Rice for a while, because Mr. Rice was concerned about some side effects from new medicine he was taking. (TR IV, p 97) In January, 2014, Mr. Oros asked Mr. Rice for money for insulin; Mr. Rice gave him \$20, then another \$5 or \$10. (TR IV, pp 96-97) In February, 2014, the day after one of Mr. Oros' visits, Mr. Rice noticed a lock on a door was broken and a collection of coins was missing from his home. (TR IV, p 98) When asked by investigating police, Mr. Oros admitted taking the coins. (TR IV, p 107)

On November 22, 2014, an unidentified man approached several residents of the Claybourne Court Apartment complex in Kalamazoo, stating that he was locked out of his apartment, without a phone or debit card, and asking for money and for permission to use the phone. (TR I, pp 221-239; TR II, pp 7-130). Some of these witnesses identified the man as Mr. Oros; some of them allowed the man to use their phone; some of them gave or lent the man money. (TR I, pp 221-239; TR II, pp 7-13) None of the residents testified that the man was threatening or violent in any way.

Instant Offense

At 10:00 p.m. on November 22, 2014, there was a fire in the apartment of Marie McMillan, located at the Claybourne Apartment complex. (TR II, pp 131-33). After the fire was extinguished, Ms. McMillan's charred body was found lying on the bed, underneath blankets and some wicker furniture. (TR II, p 151). It was determined that the fire was "humanly involved," meaning that it was not accidental and was started by an unknown person. (TR II, p 207).

¹² This testimony was allowed, over profuse defense objection, as res gestae evidence, and as evidence of other acts conducted pursuant to a common plan or scheme. (Hrg 4/17/15, 19-20; Hrg 5/1/15; Hrg 5/15/15, 1-24; Hrg 7/10/15, 1-37)

The police canvased the apartment complex, spoke to the residents who had been in contact with Mr. Oros, then located Mr. Oros by tracing the cell phone number he had called from several residents' phones. (TR III p 7). . On November 23, 2014, police found and arrested Mr. Oros. (TR III, p 15).

In a statement Mr. Oros gave to police after his arrest, Mr. Oros stated that he had asked Ms. McMillan if he could enter her home to use her phone.¹³ (TR III, p 60). While he was sitting at her desk using her phone, Ms. McMillan struck him in the head from behind with a coffee mug.¹⁴ (TR III, p 60). The blow knocked him to the ground and Ms. McMillan then sat on top of him with a huge knife in her hand, moving it back and forth by his forehead while saying "shut up" and talking about her cats.¹⁵ (TR III, pp 60-61). Mr. Oros said he was afraid. (TR IV, p 27) After some time passed, Mr. Oros was able to get Ms. McMillan off of him by rocking himself and punching her. (TR III, p 62). He then gained control of the knife and began to stab her throughout her body. (TR III, p 62). The medical examiner testified that Ms. McMillan's body incurred about 29 stab wounds. (TR V, p 13)

When Mr. Oros returned home, his girlfriend, Robin Wiley said he was disoriented and discombobulated, with a "goose egg" on his head. (TR IV, pp 67-68) Also, the detective who interviewed Mr. Oros photographed Mr. Oros' injuries, which included a cut on the back left side of his head. (TR III, pp 70-71).

Mr. Oros told the detective that after he subdued Ms. McMillan he moved her body into her bedroom. (TR III, pp 62-64).

¹³ The videotape of Mr. Oros' police interview was admitted into evidence, and portions were played at trial. (TR III, 69, 201-203)

¹⁴ Porcelain pieces of a coffee mug with embedded hair were found at the scene, although none of Mr. Oros' DNA was found on them. (TR III, p 178)

¹⁵ Ms. McMillan did not have a cat at that time. The last one she had had died six months prior. (TR I, 219)

He then left the apartment for a period of time and returned later to clean up the scene. (TR III, pp 64-65). He set a fire on the bed where he had laid her body, packed up several items that he believed bore his fingerprints or DNA, and disposed of them in the Kalamazoo River. (TR III, pp 64-65).

Evidence was admitted concerning a text message exchange between Mr. Oros and Ms. Wiley on November 22nd, in which Mr. Oros stated that he had been attacked at knifepoint and hit in the head with a coffee mug. (TR III, p 197). Ms. Wiley testified that, after Mr. Oros came home, the two of them returned to Ms. McMillan's apartment together because Mr. Oros wanted to clean up the scene. (TR IV, pp 49-50). She claimed she remained outside when Mr. Oros went inside the apartment. (TR IV, p 51) Ms. Wiley pled guilty to being an accessory after the fact to a felony. (TR IV, p 30)

As indicated, the jury found Mr. Oros guilty as charged, of first degree premeditated murder; first degree felony murder¹⁶, predicated on either false pretenses under \$200 or larceny under \$200¹⁷; first degree arson; second degree home invasion; and escape.

¹⁶ The jury was instructed on second degree murder and voluntary manslaughter, as lesser included offenses of first degree premeditated murder and first degree felony murder. (TR V, pp 137-138, 141-142) The jury was also instructed on self-defense with respect to the murder charges. (TR V, pp 141-144)

¹⁷ TR V, p 139

I. THE COURT OF APPEALS CORRECTLY VACATED MR. OROS' CONVICTION FOR PREMEDITATED MURDER, BECAUSE THERE WAS NO EVIDENCE OF PREMEDITATION OR DELIBERATION.

Issue Preservation and Standard of Review

This Court conducts a *de novo* review to determine whether a verdict is sustained by constitutionally sufficient evidence. *People v Patterson*, 428 Mich 502 (1987) A challenge to the sufficiency of evidence need not be raised in the trial court to preserve it for appellate review. *Patterson*, *supra* at 505.

Argument

Mr. Oros was convicted of first degree premeditated murder for the death of Marie McMillan. That conviction cannot stand, however, because there was no evidence of premeditation and deliberation, which are both essential elements of the offense.

The United States Supreme Court held in *In Re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970) that the accused's right to due process mandates the prosecutor prove each element of the charged offense beyond a reasonable doubt.

Basing its holding on *Jackson v Virginia*, 443 US 307, 315; 99 S Ct 2781; 61 L Ed 2d 560 (1979), the Michigan Supreme Court, in *People v Hampton*, 407 Mich 354 (1979) articulated the proper standard for determining whether a conviction is based on sufficient evidence. The Court in *Hampton* rejected, as inconsistent with due process, the notion that as long as there is "some evidence" from which to infer guilt, a conviction may be sustained. Rather, the Court held that there must be sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *Id.* at 366-368.

Reviewing the substance of the case is not tantamount to second guessing the trier of fact, since this Court must view the evidence “in the light most favorable to the prosecution.” *People v Wolfe*, 440 Mich 508, 515 (1992), *amended* 441 Mich 1201 (1992). If the prosecution fails to present sufficient evidence of the accused’s guilt, a judgment of acquittal must be entered. *Hampton, supra* at 368.

Application of these principles to the instant case reveals that evidence was constitutionally insufficient to sustain Mr. Oros’ conviction for premeditated murder.

MCL 750.316 (1)(a) defines first-degree premeditated murder as “[m]urder perpetrated by means of poison, lying in wait, or any other willful, deliberate and premeditated killing.” Meanwhile, second degree murder is defined simply as “[a]ll other kinds of murder[.]” MCL 750.317.

The distinction between the two degrees would be meaningless if “deliberation” and “premeditation” are not given any constructive weight, by construing the two words as requiring no more reflection than may be involved in the mere formation of a specific intent to kill. *People v Hoffmeister*, 394 Mich 155, 158 (1975). Thus, in order to sustain this conviction, the prosecution was obligated to prove, beyond a reasonable doubt, that Mr. Oros not only intended to kill Ms. McMillan, but that he deliberated and that the murder was premeditated.

“The additional elements of premeditation and deliberation need not be established by direct evidence. The requisite state of mind may be inferred from defendant’s conduct judged in light of the circumstances. Such an inference, however, must have adequate basis in record evidence.” *People v Hoffmeister*, 394 Mich at 158-59.

The only evidence introduced by the prosecution in an attempt to show premeditation and deliberation was the fact that Ms. McMillan suffered multiple stab wounds. However, the sheer number of stab wounds or the brutality of a killing does not alone justify a jury to infer premeditation and deliberation. Indeed, this Court held in *Hoffmeister* that such evidence is not even *relevant* to the determination of whether premeditation and deliberation are proved: “The mere fact that the killing was attended by much violence or that a great many wounds were inflicted is not *relevant* (on the issue of premeditation and deliberation), as such a killing is just as likely (or perhaps more likely) to have been on impulse.” *People v Hoffmeister*, 394 Mich at 159, quoting LaFave & Scott, Criminal Law, § 73, p 565 (emphasis added).

As noted by the Court below, evidence of these critical elements is no more present in this case than it was in *Hoffmeister*. *Slip Op* at 5. There, as here, the prosecution relied solely on the fact that the victim died of multiple stab wounds. But this Court held in *Hoffmeister* that, to prove premeditation and deliberation, “[s]ome time span between initial homicidal intent and ultimate action is necessary.” *Id.* at 161. Such evidence was lacking in *Hoffmeister*, where evidence merely proved that the defendant and the victim had had a brief encounter, which left the victim with multiple stab wounds. Evidence of premeditation and deliberation was likewise absent from Mr. Oros’ trial, where all that was shown was that he entered the decedent’s apartment and left her with multiple stab wounds.

Here, the prosecution did not establish that Mr. Oros had “adequate time for reflection,” between “initial homicidal intent and ultimate action.” Contrary to the prosecution’s contrary assertion, the medical examiner never indicated or even intimated that any of the wounds “evidenced calculated and deliberate action”¹⁸ on Mr. Oros’ part.

¹⁸ Plaintiff-Appellant’s Application, pp 11-12.

The fact that some stab wounds may have taken more effort to inflict is not persuasive evidence to establish time to reflect.

The stab wounds that Mr. Oros inflicted may demonstrate intent to kill, but they do not establish evidence that he calmly calculated a plan to kill. In fact, the number of stab wounds actually corroborates Mr. Oros' explanation of acting in a frenzy, without time to cool down to reflect on his actions. As this Court noted in *Hoffmeister*, "(M)any murders most brutish and bestial are committed in a consuming frenzy or heat of passion, and that these are in law only murder in the second degree. The Government's evidence sufficed to establish an intentional and horrible murder-the kind that could be committed in a frenzy or heat of passion." *Hoffmeister*, 394 Mich 155, 160, quoting from *People v Anderson*, 70 Cal 2d 15; 73 Cal Rptr 550; 447 P2d 942 (1968).

The Court of Appeals below carefully navigated the authorities prosecution offered in support of its proposition and soundly concluded that evidence adduced at Mr. Oros' trial was insufficient to prove beyond a reasonable doubt that Mr. Oros acted with premeditation and deliberation. The Court properly noted this Court's holding in *People v Johnson*, 460 Mich 720, 721-722 (1999) that "neither the brutal nature of a killing nor manual strangulation *alone* is sufficient to show premeditation." Slip Op at 5 (emphasis added by the Court below). In addition to strangulation, the Court below noted that evidence in *Johnson* established that the defendant moved the victim to a secluded place before killing her, that he had been asking for the victim an hour before the killing, that he had asked the victim if she was leaving for the day, and that he had directed another individual away from the area where the murder occurred shortly thereafter. Slip Op at 5, referencing *Johnson*, 460 Mich at 722, 730-733.

The Court below also carefully distinguished the circumstances in the instant case from those in *People v Gonzalez*, 468 Mich 636 (2003), where this Court held that manual strangulation could be used to prove premeditation, but this Court did not conclude that such evidence *alone* was sufficient to prove that element beyond a reasonable doubt. Slip Op at 5.

Similarly unavailing is the prosecution's citation to *People v Unger*, 278 Mich App 210 (2008), a case with an abundance of evidence that the defendant premeditated his wife's death, including a contested divorce, substantial life insurance and movement of the victim's live body into the lake. *Id.* at 224, 230-231.

While the jury is the sole judge of the facts because it is in the best position to weigh the evidence and decide the credibility of the testimony, a verdict cannot be sustained if there is insufficient evidence to prove the offense. *People v Palmer*, 392 Mich 370, 375–76; 220 NW2d 393 (1974); *People v Hoffmeister*, 394 Mich at 162. “[A] conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm.” *Jackson v Virginia*, 443 US at 307. .

Therefore, the Court of Appeals correctly vacated Mr. Oros' conviction for premeditated murder.

SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellee asks that this Honorable Court deny the Plaintiff-Appellant's Application for Leave to Appeal.

Respectfully submitted,

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